RETURN

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P. C. No.	Subject.	Date.
570	Order in Council and report of Minister of Justice transmitting to Lieutenant Governor of Ontario copy of petition from Samuel Genest and others praying for the disallowance of an Act of the Legislature of Ontario, Chapter 45 of 5 Geo. V. (1915).	11th March, 1916,
	Report of Prime Minister of Ontario on above petition.	4th April, 1916.
1004	Order in Council and report of Minister of Justice on the Statutes of the Legislature of Ontario, passed in the 5th year of His Majesty's reign, (1915.)	28th April, 1916.

CERTIFIED *copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General, on the 11th March, 1916.*

The Committee of the Privy Council have had before them a report, dated 8th March, 1916, from the Minister of Justice, stating that there has been referred to him a petition addressed to Your Royal Highness in Council by Samuel M. Genest, and many others, praying for the disallowance of an Act of the Legislature of Ontario, chapter 45 of 5th George V (1915), respecting the Board of Trustees of the Roman Catholic Separate Schools of the city of Ottawa, upon the grounds set forth in the petition, copy of which is submitted herewith. This Act was assented to on 8th April, 1915, and received by the Secretary of State for Canada on 28th April, 1915, and the time for disallowance will therefore expire within a few weeks.

The Minister recommends that a copy of the petition be transmitted to the Lieutenant-Governor of Ontario, with a request that he report as early as possible for the information of Your Royal Highness in Council the views and contentions of his Government as to the allegations and case made by the petition.

The Committee concur in the foregoing recommendation and submit the same for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

OTTAWA, March 8, 1916

To His Royal Highness
The Governor General in Council:

There has been referred to the undersigned a petition addressed to Your Royal Highness in Council by Samuel Genest and many others, praying for the disallowance of an Act of the Legislature of Ontario, chapter 45 of 5 George V (1915), respecting the Board of Trustees of the Roman Catholic Separate Schools of the city

of Ottawa, upon the grounds set forth in the petition, copy of which is submitted herewith. This Act was assented to on 8th April, 1915, and received by the Secretary of State for Canada on 28th April, 1915, and the time for disallowance will therefore expire within a few weeks.

The undersigned recommends that a copy of the petition be transmitted to the Lieutenant Governor of Ontario, with a request that he report as early as possible for the information of Your Royal Highness in Council the views and contentions of his Government as to the allegations and case made by the petition.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

To His Royal Highness the Governor General in Council:

The petition of the Board of Trustees of the Roman Catholic Separate Schools of the city of Ottawa, on its own behalf and on behalf of numerous Boards of Trustees of Roman Catholic Separate Schools in the province of Ontario and on behalf of supporters of Roman Catholic Separate Schools in the said city of Ottawa and throughout the said province.

HUMBLY PRESENTS:

1. Your petitioners are the trustees of the Roman Catholic Separate Schools of the city of Ottawa and the representatives of Roman Catholic Separate School ratepayers of the said city, and of numerous Boards of Trustees of Roman Catholic Separate Schools in the province of Ontario. Your other petitioners are supporters of Roman Catholic Separate Schools in the said city of Ottawa and in various parts of the said province of Ontario.

2. Since the year 1841 the Roman Catholic subjects of His Majesty, in the said province, have had by law the right to establish, maintain and control, in said province, Roman Catholic Separate Schools; to determine the number, sites, kind and description of such schools; to regulate the course of study to be followed and the books to be used therein, and to make general rules for their conduct; to appoint local superintendents of such schools and to employ and pay the teachers required therein, and define the duties of such teachers; to levy and collect from the supporters of such schools by means of taxes or rates, the sums of money required for their establishment, maintenance and conduct, and to administer the said school rates, monies and other assets of said schools by and through trustees elected by them, as provided by law; to share in the funds annually granted by the legislature or the municipal authority for school purposes; and generally to exercise all the powers conferred on the trustees of Common or Public Schools by the educational laws in force prior to the British North America Act, 1867.

(1841) Vic. 4 and 5, Cap. 18, s. 11 and 16.
(1843) Vic. 7, Cap. 29, s. 55 and 56.
(1846) Vic. 9, Cap. 20, s. 32 and 33.
(1847) Vic. 10 and 11, Cap. 19, sub s. 3 of s. 5.
(1850) Vic. 13 and 14, Cap. 48, s. 19.
(1853) Vic. 14 and 15, Cap. 111, s. 4.
(1855) Vic. 18, Cap. 131.
(1863) Vic. 26, Cap. 5.

3. From the year 1841 aforesaid to the time of the passing of the British North America Act, 1867, the rights so conferred by law on the said subjects of His Majesty, in the said province, were continuously and freely exercised by them.

4. Under and by virtue of the various statutory enactments above referred to, and more especially under 26 Vic., Cap. 5, Orders in Council, regulations, departmental instructions and circulars, the Roman Catholic subjects of French origin, of His Majesty, in said province, from time to time, and with the sanction and co-operation of the Council of Public Instruction of said province, in accordance with the rights and privileges so defined, established, maintained and conducted Roman Catholic Separate Schools and classes, in some of which the French language was the only language used, as the means of instruction and communication and as a subject of study, and in some of which the French and the English languages were used as a medium of instruction and communication, as well as a subject of study; and at the time of the passing of the British North America Act (1867) a great number of schools and classes of the kind and description above mentioned had been established and were being maintained in various parts of the said province.

5. By subsection 1 of section 93 of the British North America Act, 1867, the rights and privileges with reference to Separate Schools guaranteed by law, as aforesaid, and which they had continuously and freely exercised during the period aforesaid, namely, from 1841 to 1867, were ratified and confirmed, and their existence and exercise were guaranteed and made permanent and perpetual.

6. Subsquently to the passing of the British North America Act, 1867, the aforesaid subjects of His Majesty have continuously exercised the rights and privileges above described and from time to time established, maintained and conducted, throughout the said province, an ever-increasing number of schools and classes of the kind and character above described.

7. The Council of Public Instruction, before 1876, and the Department of Education since, have co-operated with the said subjects of His Majesty and furnished them financial and other assistance in the establishment, maintenance and conduct of the said schools and classes.

8. But in the year 1912 the Department of Education of the said province enacted, with reference to said schools and classes, Regulation No. 17, by which the use of the French language in said schools has been unjustly limited or actually prohibited and by which said schools have been subjected to an inspection contrary to and infringing upon the denominational character of said schools, and the Department of Education has since endeavoured to enforce its provisions, notwithstanding the representation, objections and protests of your petitioners.

9. Your petitioners were compelled to resort to the courts of justice of said province to assert their rights and privileges, to impeach the validity of such regulation and to seek redress against its provisions and the enforcement thereof.

10. In the year 1915, the legislature of the said province, by chapter 45 of statute 5, George V, because your petitioners refused to submit to unjust, illegal and arbitrary provisions of said regulation and, notwithstanding the protests of your petitioners and that the validity of said regulation was then being tried in the said courts of justice, purported to ratify and valididate the provisions of said Regulation No. 17, and by the said Act authorized the Minister of Education for the said province to appoint a commission and vest therein all or any of the rights, privileges and powers which your petitioners, the Board of Roman Catholic Separate School Trustees of the city of Ottawa, possess by law and to suspend or withdraw all of the said rights, privileges and powers.

11. On the 20th July, 1915, the Acting Minister of Education for the said province, claiming to act in pursuance of said chapter 45 of 5 George V, appointed a Commission as "The Ottawa Separate School Commission" and purported to confer upon the members thereof all the powers, rights and privileges conferred by law on your petitioners, the said Board of Roman Catholic Trustees for the Separate Schools

of the city of Ottawa; and authorized the said Commission to take possession of and control and manage all the property and assets of the said Board and all the Roman Catholic Separate Schools and classes of the said city of Ottawa.

12. The said Commission thereupon forcibly took and since holds and retains possession of the offices, books, papers, properties and assets, as well as all the schools established and maintained by the said Board, and has appropriated to its own use the said monies and property and has attempted to exclusively conduct and manage the schools and classes aforesaid, to levy and collect from the supporters of such Separate Schools the monies required for their conduct; to enforce the provisions of Regulation No. 17; to employ in said schools teachers selected by it and to dismiss teachers engaged therein, and to prevent the monies levied for the conduct of such schools being used for such purpose, notwithstanding the protests of your petitioners and the said legal proceedings which are still pending before said courts of justice, and the said Board has been deprived of its property, its rights and privileges and prevented from performing its duties and exercising its rights and privileges as established by law.

13. The said Board and their constituents have since, by numerous petitions, representations and repeated endeavours, and by the institution and prosecution of legal proceedings in the Courts of Justice in the said Province, resisted the confiscation of their property, the deprivation of their rights and privileges, and sought to recover the possession, management and control of their schools; but the said Commission, with the assistance of the Department of Education of the said province, has continued to usurp and is still usurping the rights, powers, privileges and duties so conferred by law on and so guaranteed by the Federal constitution to the said Board, the representations made by your petitioners and the legal proceedings instituted by them having been so far without any avail.

14. The said Commission has refused to pay the salaries of about 125 of the teachers employed in the Roman Catholic Separate Schools of Ottawa, who were engaged by the said Board long prior to the appointment of the said Commission, and who have since been retained and employed by said Commission, as teachers in said schools. And in consequence said teachers have abandoned the said schools and have refused to any longer teach in said schools, and the pupils attending said schools, to the number of about five thousand, are now deprived of their education. The Department of Education has furthermore withheld from and refused to pay to said Board its share of the fund granted by the Legislature for the support of said schools.

15. Your petitioners respectfully submit that the enactment and enforcement of Regulation 17 and chapter 45, 5 George V, constitute an unjust and arbitrary violation and the abrogation of the provisions of the laws respecting Separate Schools, of the British North America Act, 1867, and of the rights, privileges, powers and duties by such laws granted and guaranteed to the said Board and the said ratepayers.

16. The rights, privileges, powers and duties so abrogated or violated, are principally the following:—

(*a*) The right to establish, maintain and control Roman Catholic Separate Schools by trustees elected by the supporters of the said schools. 26 Victoria, chapter 5, sections 2, 3 and 5.

(*b*) The power to impose, levy and collect school rates or subscriptions from the supporters of such schools. 26 Vic., chap. 5, section 7; C.S.U.C. 1859, cap. 64 s.s. 11 and 12 of s. 79.

(*c*) The right to appoint the local Superintendent of such schools and to determine his salary. C.S.U.C., cap. 64, s.s. 2 of s. 79.

(*d*) The possession and management of the said schools and classes. C.S.U.C., cap. 64, s.s. 4 and 5 of s. 79.

(*e*) The right to apply said school rates and assets to the management of said schools and to do whatever may be expedient in their interest. C.S.U.C., cap. 64, s.s. 6 and 7 of s. 79.

(*f*) The right to determine the number, sites, kind and description of schools to be established and maintained. C.S.U.C., cap. 64, s.s. 8 of s. 79.

(*g*) The right to select the teachers to be employed in such schools; the terms of their employment; the amount of their remuneration and the duties which they are to perform. C.S.U.C., cap. 64, s.s. 8 of s. 79.

(*h*) To pay the teachers so employed. C.S.U.C., cap. 64, s.s. 13 of s. 79.

(*i*) To determine the text books to be used in said separate schools. C.S.U.C., cap. 64, s.s. 7-11-15 of s. 79.

(*j*) To have the teachers employed in such schools examined by the Board of Public Instruction and their certificates granted by it. C.S.U.C., cap. 64, s.s. 4 and 5 of s. 79. C.S.U.C., cap. 64, s.s. 94 and 96.

(*k*) To have the Local Superintendent apportion the school fund. C.S.U.C., cap. 64, s.s. 1 of s. 91.

(*l*) To grant to teachers employed or to be employed in said schools temporary certificates, 13 of 36 Vic., cap 5. C.S.U.C., cap 64, s.s. 9 and 10 of s. 91.

(*m*) And generally to exercise all the powers of public school trustees with respect to common schools, as conferred on them by the laws in force at the time of the passing of the British North America Act (1867) 26 Vic., cap 5, s. 7.

17. Regulation No. 17 and 5 George V, cap. 45 furthermore violates section 84 of the Public Schools Act, which permits the use of a language other than English as a means of instruction or communication s.s. B. of S. 84, cap. 266 R.S.O. 1914.

18. Regulation No. 17, and the statute which purports to validate it, completely, definitely and permanently prohibits the use of the French language either as a means of instruction and communication or as a subject of study in all the said schools established subsequently to the month of June, 1912.

19. Regulation No. 17 and chapter 45, 5 George V, also violate and abrogate section 61 of cap. 64 C.S.U.C. (1859) inasmuch as it authorizes the appointment by the Department of Education of two special Inspectors to inspect the said schools. The said special Inspectors have been appointed by the said Department and they have insisted and are now insisting upon inspecting the said schools. C.S.U.C. (1859), cap. 64, s.s. 9 and 10 of s. 91, C.S.U.C. (1859), cap. 64, s.s. 4 of s. 98.

20. Regulation 17 and Chap. 45, 5 George V also violate the provisions of section 13 of cap. 26 Vic., with reference to the examination and granting of certificates to teachers to be employed in such schools. C.S.U.C. (1859) Cap. 64. s.s. 4 of s. 98.

21. Regulation No. 17 and cap. 45, 5 George V infringe:—

(*a*) Order in Council of the Executive Council of Upper Canada. 1851.

(*b*) 2nd and 3rd chapters of Magna Charta, reproduced in the statutes of the said province. R.S.O. 1897, cap. 322, s. 2.

(*c*) Section 8 of the Quebec Act. 1774.

(*d*) 1863, 26 Vic., cap. 5.

(*e*) Section 129, British North America Act, 1867.

(*f*) Section 133, British North America Act, 1867.

(*g*) Regulation No. 15 of the Department of Education.

22. Your petitioners further urge on general grounds and principles that the regulation and statute in question are contrary to:

(*a*) The elementary principles of natural law and justice and the right of the parent to determine the quantity and quality of the education to be given to his offspring.

(*b*) The spirit, as well as the letter, of the provisions of the British North America Act, which decrees the equality of the English and French languages in the conduct of national affairs.

23. The statute and regulation in question tend to defeat the very object for which English-French schools were established and maintained, with the co-operation of the educational authorities, since 1841 to the present time.

24. The statute and regulation in question are directly opposed to the policy which obtains everywhere else in the British Empire. They deprive a large and fast growing portion of the population of Ontario of the full measure of their utility in exercise of their natural and lawful rights and the discharge of their duties in the parliamentary, municipal or other fields of public activity. They have put the majority of the province of Ontario in an aggressive and unfriendly attitude towards the majority in the next largest and most important province of the Dominion, and they have caused feelings of uneasiness and unfriendliness between the two principal elements of the Canadian population. They are based on the erroneous theory, that for the sake of uniformity and homogenity, one language only should be taught or used in the schools of this province. They tend to detract from the variety and picturesqueness of Canadian national life and deprive it of one of its best and surest sources of intellectual inspiration and achievement and at the same time destroy other advantages, moral, social and scientific, resulting from the possession of two or more languages. They ignore and take no account of the fact that Canada has been, is and must continue to be a bilingual country, and that the French language is the mother tongue of one-third of the Canadian population. They constitute a departure from and are contrary to the traditions and customs which have constantly prevailed in this province before and after the union of Upper and Lower Canada, by which French Schools and French Classes in both public and separate schools have been established and maintained, with the support of the educational authorities of the province. They fail to recognize the right and privilege of His Majesty's subjects of French origin, and never before denied to have their mother tongue used as the vehicle of instruction and communication in the education of their children.

25. Regulation 17 and chapter 45, 5 George V, ignore the fact that at the time of the passing of the British North America Act (1867, the French and English languages all over Canada stood upon an equal footing and equal right. They ignore the fact, which is manifest, that the French Canadian children of Ontario are now acquiring a sufficient and in most cases a complete knowledge of the English language, while improving the use of their mother tongue. They are contrary to those sound and sane rules of pedagogy, recognized universally and especially in many parts of the British Empire, and which proclaim that the easiest, surest and most direct way to the mind and heart of the pupil is through his mother tongue. They ignore that educationists all over the world have recognized that the best results are obtained when the medium of instruction and communication is the mother tongue.

26. Your petitioners humbly beg to remind Your Royal Highness that the first pioneers of the province of Ontario, as well as most portions of the North American Continent, those who first introduced therein Christian civilization, were of French origin and that their language was, for more than a century and a half before Canada became a part of the British Empire, the only language spoken, besides the Indian dialects, and that the descendants of those pioneers, who constitute nearly one-third of the population of Canada and whose mother tongue still is and will continue to be the French language, have on many memorable occasions proved their constant and unalterable loyalty and attachment to the British Crown and British institutions.

The Undersigned humbly and respectfully submit that their protests and objections to the enactment and enforcement of the said Regulation and Statute are inspired, and they think fully justified. by their inviolable attachment to their

mother tongue and religious faith and their determination to perpetuate them and not to submit to their banishment from the schools established by them, maintained and supported with their own moneys and improved by their constant efforts and devotion, as well as their desire and determination to retain and hold the control and management of their denominational schools, granted to and enjoyed by them from time almost immemorial and solemnly guaranteed by His Majesty's Imperial Parliament; and in that view only they submit their present petition to Your Royal Highness, the Governor in Council, to afford them the redress which, for the reasons stated, they humbly submit, they are entitled to.

Therefore, your petitioners humbly pray Your Royal Highness, the Governor in Council:

1. To disallow the Act of the province of Ontario, Chapter 45, 5 George V, 1915, respecting the Board of Trustees of the Roman Catholic Separate Schools of the city of Ottawa.

SAMUEL GENEST

AND 1001 OTHERS.

OTTAWA, 16th February, 1916.

The Undersigned submits the following observations in answer to the Petition presented to His Royal Highness the Governor General in Council by Samuel M. Genest and others praying for the disallowance of an Act of the Legislature of Ontario, Chapter 45 of 5 George V (1915).

Objection is taken by the Petitioners to sections one and three of the Act. The former deals with Regulation No. 17 of the Department of Education which regulates the use of the French language in the Public and Separate Schools of the Province, and the latter empowers the Minister of Education under certain conditions to transfer to a Commission the rights and powers of the Trustees of the Roman Catholic Separate Schools of the City of Ottawa. The two sections deal with entirely separate and distinct matters and should be considered separately. The main ground of objection to each section is that it is *ultra vires* under subsection 1 of section 93 of the British North America Act.

Under section 93 the Legislature of Ontario may exclusively make laws in relation to education subject to the limitation imposed by the first subsection, which reads as follows:—

> "(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union."

Legislation falling within the prohibition of this subsection is *ultra vires*. The rights and privileges protected are those which any class of persons had (1) "by law" (2) "at the Union" (3) "with respect to denominational schools." All legislation affecting those rights is not prohibited but only such legislation as "prejudicially" affects them. Whether any given legislation is prejudicial is a question of fact to be determined in the particular case.

At the Union the only law of Upper Canada that conferred rights or privileges with regard to denominational schools in Ontario was contained in Statute 26 Vict., chap. 5. It authorized the voluntary establishment of Separate schools by Protestants, by coloured people and by Roman Catholics. The distinguishing feature of the Protestant and the Roman Catholic Separate schools was religious belief. No provision was contained in the Act for the use of any special language. The only schools which were in any sense differentiated by language or race were the schools of the coloured people. There were in Ontario at the Union certain French settlements and also certain German settlements, but neither the French nor the German inhabitants

of Ontario were authorized to establish Separate schools. Their children attended either the common (now called Public) schools or the Separate schools, as best suited them, but the Statute 26 Vict., chap. 5 (1863) did not, nor did any other law of the province confer upon either the French or the German people any special right or privilege with respect either to the Protestant Separate schools or to the Roman Catholic Separate schools.

It has been the effort of different Governments of the province of Ontario to secure adequate teaching of English in all the schools, both Public and Separate, of the province. A determined effort was made to increase the study of English in 1885 and subsequent years. On 9th September, 1889, the Hon. George W. Ross, then Minister of Education, issued "Instructions to the teachers of French-English schools," which in part read as follows:—

> "In August, 1885, the Education Department adopted the following regulation for the study of English in school sections where the French or German language prevails: 'The programme of studies herein provided shall be followed by the teacher as far as the circumstances of his school permit. Any modifications deemed necessary should be made only with the concurrence of the inspector and trustees. In French and German schools the authorized readers should be used in addition to any text-books in either of the languages aforesaid.'
>
> This regulation was supplemented by instructions issued in September of the same year, pointing out the best methods of teaching English in such schools, and although it appears from the report of the Commissioners who recently visited the French districts that the authorized readers are used in every school and that a laudable effort is being made by trustees and teachers to carry out the intentions of the Department with respect to the study of English, it must not be assumed that all has been accomplished that was intended by the above regulations or subsequent instructions. There is still room for improvement, particularly in colloquial use of English. The Commissioners report that in some schools the pupils in reading the English text-books appeared to be repeating words, the meaning and use of which they did not understand. This defect in teaching should receive immediate attention. It is hoped that by following the directions herewith submitted all just cause of complaint in regard to this matter will be speedily removed."

Then followed certain directions which were to be followed by the teachers to increase the study of English.

The settled policy of the present Government was indicated in the following resolution which was passed unanimously by the Assembly on 22nd March, 1911:—

> Resolved, That the English language shall be the language of instruction and of all communications with the pupils in the Public and Separate schools of the province except where in the opinion of the Department of Education it is impracticable by reason of pupils not understanding English.

In pursuance of this policy the Minister of Education with the approval of the Lieutenant Governor in Council in June, 1912, made and published Regulation No. 17. It was amended in a manner not now material in August, 1913. The important features of the regulation were:—

(1) Where necessary in the case of French-speaking pupils French was authorized to be used as the language of instruction and communication, but not without the approval of the Chief Inspector beyond Form 1.

(2) In schools where French had hitherto been a subject of study the School Board might provide under certain conditions for instruction in French reading, grammar and composition.

(3) Provision was made for inspection of these schools which in the regulation were styled English-French schools.

(4) The regulation was applicable alike to both Public and Separate schools.

The regulation was in each of the years 1912 and 1913 laid on the table of the House as required by the Department of Education Act, and without objection from any member of the Assembly, became part of the School Law of Ontario. The object of the regulation was to secure for all the pupils in the Public and Separate schools of Ontario a proper English education.

There are 192 school-rooms in Ottawa under the jurisdiction of the trustees of the Roman Catholic Separate schools (herein referred to as the Board). Of these 116 are English-French within the meaning of the said regulation and the remaining 76 are English.

After the publication of Regulation 17 in June, 1912, a majority of the Board determined notwithstanding the protest of the minority members of the Board to refuse to enforce said regulation in the English-French schools under the Board's jurisdiction, or to permit the teachers in the said schools to observe it. On September 11, 1912, the majority passed a resolution expressly declining to enforce the regulation, and they ordered that a copy of the resolution be sent to the principals of all the said schools "in order that the purport be carried out." After amended Regulation 17 was issued in August, 1913, the majority again on October 14, 1913, passed a further resolution affirming and repeating their refusal, and they ordered that a copy of the resolution "be sent to the Department of Education and to all the bilingual school boards or sections of Ontario, and that a copy of the said resolutions be also posted on the walls of each class of the French schools of the city." From that time on the wishes and views of the minority of the Board and of a very large section of the Roman Catholic School supporters in Ottawa were entirely disregarded: the Department of Education was openly defied; and the inspectors appointed by the minister were ignored by the Board, the teachers and the pupils. The inspectors found it impossible to inspect the schools, for the pupils left the school-room when the inspector arrived. Teachers who held no certificates or whose certificates expired and were not renewed and who refused to observe the regulation were continued in the service of the Board contrary to law. Legislative grants amounting to $5,000 a year became forfeited. Many of the English-speaking Roman Catholic Separate School supporters became greatly dissatisfied, the more so because the majority of the Board endeavoured to force the issue of debentures aggregating about $275,000 for additional school accommodation, notwithstanding that many English-speaking pupils were likely to be withdrawn from the schools owing to the manner in which they were being conducted.

Under these circumstances R. Mackell, a member of the Board, and certain other English-speaking members of the Board and other English-speaking Roman Catholics Separate School supporters in Ottawa commenced an action against the School Board on 29th April, 1914, in which they asked for an injunction restraining the Board from employing unqualified teachers; an injunction restraining the Board from borrowing money on debentures whilst it neglected and refused to conform to, comply with and enforce Regulation No. 17; a mandatory order requiring the Board to conform to and enforce in the schools under its jurisdiction the said regulation; and for other relief. The Board by its defence disputed the validity of Regulation 17, contending that it was *ultra vires* and beyond the jurisdiction of the authority purporting to make the same and not warranted under the laws governing Education in the Province of Ontario.

The action was tried by the Honourable Mr. Justice Lennox, the trial extending over four days. He held that Regulation 17 was valid and that *intra vires* the legislature of Ontario. His judgment will be found in Volume 32 of the Ontario Law Reports at page 245. He summed the matter up in the following paragraph (32 O.L.R., p. 256):—

"The result is that the defendants have wholly failed to show that Instruction or Regulation 17 of June, 1912, or of August, 1913, of the Department of Education for Ontario, or the manner in which these instructions have been or are being administered by the Department, prejudicially affect any right or privilege with respect to Denominational Schools which the defendants as a class of persons had by law in the Province at the Union; and the result is, too, that it does not appear that these instructions or the manner of their administration or statutes upon which they are founded are *ultra vires* of the Provincial Legislature. It follows, as a consequence, of course, they must be obeyed. That they had been flagrantly disregarded—defiantly and ostentatiously repudiated and set at naught—by the majority of the Ottawa Separate School Board, is not and could not be denied. It would serve no useful purpose to particularize the evidence of this. It is for the Department, the law being declared to see that the law is obeyed."

The School Board appealed and the First Appellate Division (the highest Court of Appeal in Ontario) unanimously reached the same conclusion and dismissed the appeal. The opinions of the Judges will be found in Volume 34 of the Ontario Law Reports at page 335. The Judgment of the learned Chief Justice, dealing with the question of the validity of the Regulation, disposes so completely of many of the contentions made by the Petitioners that his reasons on that branch of the case are here given in full:—

In support of the second ground of objection it was argued that the legislation is *ultra vires* because it prejudicially affects a right or privilege of the French speaking people, contrary to the provisions of section 93 of the British North America Act.

Prior to the passing of that Act, there had been bitter controversies in this province upon the subject of Roman Catholic Separate Schools, and these had been brought to a conclusion by the passing in 1863 of an Act intituled, "An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools." (25 Vict., cap. 5).

The preamble to that Act is as follows: "Whereas it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools, and to bring the provisions of the law respecting Separate Schools more in harmony with the provisions of the law respecting Common Schools," and, by section 1, sections 18 to 36, cap. 65 of the Consolidated Statutes of Upper Canada, which dealt with the establishment and maintenance of Roman Catholic Separate Schools, were repealed, and certain other provisions were substituted for them, by sec. 26, it was provided that "the Roman Catholic Separate Schools (with their registers) shall be subject to such inspection as may be directed from time to time by the Chief Superintendent of Education, and shall be subject also to such regulations as may be imposed from time to time by the Council of Public Instruction for Upper Canada."

The appointment of the Council of Public Instruction for Upper Canada was provided for by sec. 114 of the Consolidated Statutes of Upper Canada, cap. 64, and it exercised its duties subject to all lawful orders and directions from time to time issued by the Governor.

By 39 Vict., cap. 16, Sec. 1 the functions of the Council of Public Instruction were suspended, and all the powers and duties which it then possessed or might exercise by virtue of any Act in that behalf were devolved upon the Education Department, which was to consist of the Executive Council, or a Committee of it appointed by the Lieutenant Governor; and all the functions and duties of the Chief Superintendent of Education were vested in one of the

Executive Council, to be nominated by the Lieutenant Governor and to be designated "Minister of Education"; and whenever, in any statute, by-law, regulation, deed, proceeding, matter or thing, the term "Council of Public Instruction," or "Chief Superintendent of Education" (as the case might be) or to the like signification, respectively occurred, the same were to be construed and have effect as if the term "Education Department" or "Minister of Education" was substituted therefor respectively; and the law has so remained down to the present time.

When the Separate Schools Act was revised in 1877 by cap. 206, R.S.O., 1877, the provisions of the Act of 1873 were re-enacted with the changes rendered necessary by 39 Vict., cap. 16.

When the British North America Act was passed, the law which provided for the establishment and maintenance of Roman Catholic Separate Schools was the Act of 1863, and the rights and privileges of the Roman Catholics of the Province with respect to Separate Schools were those and in my opinion those only, which they possessed under the Act of 1863; and the purpose of subsection 1 of section 93 was to prevent, so far as the Province of Ontario was concerned, the enactment of any law relating to education which would prejudicially affect these rights or privileges.

The Separate Schools Act, besides providing for the establishment and maintenance of Roman Catholic Separate Schools, also provided for the establishment and maintenance of Separate Schools for coloured people and of Separate Schools for Protestants, and the principle applied in all cases was that these Separate Schools were to be brought into existence by the voluntary action of the respective classes, Protestants, Roman Catholics, and coloured people, which desired that they should be established.

Save only in the case of schools for coloured people, there is not to be found in the legislation prior to Confederation any recognition of the right to Separate Schools based upon linguistic or racial differences, or upon anything but religious differences.

The basic principle upon which the Separate Schools were founded was that Roman Catholics should not be required to contribute to the support of Common or Public Schools if they chose to establish Separate Schools for the education of Roman Catholic children, and that, in the event of their doing so, these schools should share in the legislative grants for Common or Public School education, and that for their support the trustees of the schools should have power to impose, levy, and collect school rates or subscriptions from persons sending children to or subscribing towards the support of the schools, and that they should have all the powers in respect of their schools that trustees of Common Schools have and possess under the Acts relating to Common Schools. It was only persons who gave notice that they were Roman Catholics and supporters of Separate Schools that were exempted from the payment of rates imposed for the support of Common Schools, and the right to withdraw their support from the Separate Schools was given to persons who had given this notice but desired to withdraw their support.

It seems to me quite plain, therefore, that the effect of sub-sec. 1 of sec. 93 which provides that "nothing in any such law" (i.e., a provincial law in relation to education) "shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union," is, as far as the province of Ontario is concerned, to restrict the exclusive authority to make laws in relation to education to the extent of prohibiting the making of any such law which would prejudicially affect the rights or privileges with respect to denominational schools which are

conferred by the Act of 1863, and to that extent only; and that, subject to that limitation, the legislative authority of the province as to education is "as plenary and as ample . . . as the Imperial Parliament in the plenitude of its power possessed and could bestow:" per Sir Barnes Peacock in Hodge v. The Queen (1883), 9 App., Case 117, 132.

That it is only rights or privileges which exist as legal rights or privileges ("have by law") that are preserved is plain, and it was so held by the Judicial Committee in city of Winnipeg v. Barrett (1892), A.C. 445. See also Brophy v. Attorney General of Manitoba (1885), A.C. 202.

I am unable to find anything which supports the contention of the learned counsel for the appellants that the right to use the French language in the Separate Schools of the province was guaranteed by treaty or otherwise to the French-speaking people, nor am I able to appreciate the contention that that is a natural right pertaining to them which the legislature is powerless to impair or destroy.

However, even if it had been shown that, by the terms of the treaty which resulted in the cession of Quebec to Great Britain, this right had been guaranteed to the French-speaking people of the ceded territory, the new Constitution for Canada which was provided by the British North America Act would have abrogated those rights except in so far, if at all, as they are granted by it.

The British North America Act was the result of long deliberation and careful consideration by representatives of the various provinces which were by it united into one Dominion, and great care was taken to provide for preserving the rights which religious minorities then possessed in matters relating to education. The use of the French language was also a question considered and dealt with; and, by section 133 the right was given to use that language in the debates of the Houses of Parliament of Canada and of the Houses of the Legislature of Quebec, and by any person or in any pleading or process in or issuing from any court of Canada established under "this Act and in or from all or any of the courts of Quebec."

It is inconceivable to me that the framers of the resolutions on which the Act was based would have embodied in them these provisions if they had any idea that the French-speaking people already enjoyed the greater rights which, according to the contention of the appellant's counsel, they possessed.

It was argued by counsel for the appellants that section 133 supports his contention; but that it is clearly not so, I think. So far from supporting it, an intention is indicated that, except as to the matters dealt with by this section, the plenary power of the Legislature, within the ambit of its legislative authority, was to be unlimited as to what it should ordain as to the use of the French language.

The judgment of the learned trial judge is, in my opinion, right, and should be affirmed, and the appeal should be dismissed with costs.

Attention is also invited to the reasons for judgment delivered by the Honourable Mr. Justice Garrow at page 342 of the report. In a later case the Honourable the Chief Justice of the Common Pleas (Chief Justice R. M. Meredith) again upheld the validity of the regulation in the following paragraph (30 O.L.R. 630):—

> The rocks upon which it was said that the Ottawa Separate Schools came near to foundering are said to be: the appointment of an inspector who was not a Roman Catholic and an overruling of the Board's desires as to the language to be used in teaching. Whether these things were necessary or unnecessary, gracious or ungracious, is a matter that does not in any way

affect the legal question involved in these actions; if they were lawful, the plaintiffs' appeal should not be to those who expound the law, but to those who make it, or to those who elect the makers, in regard to any grievances they may feel that they have. That these things were not unlawful, the main purpose of Public Schools, and the very words of the Separate Schools Act, which I have read, seem to me to make very plain; and, besides that, the judgment of the highest court of this province has decreed that they were lawful.

The result is that the validity of Regulation No. 17 has been affirmed by not less than seven judges of the Supreme Court of Ontario—by Sir William R. Meredith, C.J.O., Garrow J., Maclaren, J., Magee, J., and Hodgins, J., of the Appellate Division, and by Meredith, C.J.C.P., and Lennox, J., of the High Court Division. None of these judges expressed any doubt on the point. With so many judicial opinions of such high standing in favour of the validity of the regulation it is not considered necessary to elaborate further argument. The reasoning upon which these judgments proceéded is adopted.

It is further to be noted that section 1 of the Act dealing with Regulation 17 is of very limited effect. The Act was passed after judgment had been rendered by Mr. Justice Lennox declaring the regulation valid. Section 1 does not in any way embarrass the Board in contending on appeal in any higher court that the Act is *ultra vires* as that question is reserved by the express language of the section. It merely affirms the judgment in so far as it determined that the provisions contained in the regulation could be brought into effect by regulation under the Department of Education Act and that the proper procedure had been adopted for that purpose.

Under the Department of Education Act regulations may be made for the establishment, organization, government, courses of study and examination of public, separate and other schools. A regulation to be valid and to remain in force must (1) be made by the Minister; (2) be approved by the Lieutenant Governor in Council; (3) be laid before the Legislative Assembly within a time fixed by the Act; and (4) not be disapproved by the Assembly. Evidence was given at the trial to show that all these provisions had been complied with. The Regulation would have equal force in law if section 1 of the Act of 1915 had not been passed.

Section 3 of the Act authorizing the transfer of the powers and duties of the Board to a Commission will now be considered. It must be read along with section 2 of the Act and both sections must be applied to the circumstances existing at the time the Act was passed. When this is done it is clear that section 3 was passed for the purpose of securing to all the Roman Catholic Separate School supporters in Ottawa their rights and privileges with respect to denominational schools rather than to take away such rights and privileges or to "prejudicially affect" them.

In Ottawa it happens that the majority of the supporters of the Roman Catholic schools speak the French language and the minority the English. But the minority is by no means small. Indeed if they are judged by their contributions toward the upkeep of the Roman Catholic Separate schools the minority becomes the majority. Judged, however, by voting power the majority are of French descent. The result is that the French-speaking adherents of the schools control the election of Separate School trustees and are thus in a position to dominate the situation. But minority member of a class who have contributed their moneys toward the establishment and maintenance of Separate schools have equally with the majority rights and privileges which must be respected under the British North America Act. They are not to be deprived of those rights and privileges by oppression and unlawful conduct on the part of the majority either directly or through the medium of a subservient Board of Trustees. If they are so deprived of their legal rights they are entitled to protection from the courts and if the machinery of the courts is not sufficiently elastic to secure to them a full measure of relief they are entitled to relief by legislation.

As already mentioned, R. Mackell and other English-speaking Separate School supporters commenced proceedings in the Supreme Court of Ontario to assert their rights. On their application the Honourable the Chief Justice of the King's Bench (Sir Glenholme Falconbridge), and later the Honourable Mr. Justice Hodgins, made orders, dated respectively 29th April, 1914, and 20th May, 1914, restraining the Board until the trial or other final determination of the action from continuing in its employ or paying the salaries of unqualified teachers or the salaries of teachers who refused to conform to the regulations of the Education Department and restraining the Board from raising money on debentures. Instead of carrying out the spirit of these orders the Board refused to pay any of the teachers, including the lay teachers in English schools under their charge, notwithstanding that such teachers were qualified and were obeying the regulations. Later, in July, 1914, during a postponement of the trial made at the Board's request, Mr. Genest, the Chairman of the Board, professing to act under a resolution passed by a majority of the Board but against the protest of the minority, dismissed all the qualified lay teachers in the Board's employ with the result that all the English schools remained closed when they should have been re-opened after the summer vacation. A resolution authorizing Mr. Genest so to act was passed when the application for an injunction was pending before Mr. Justice Hodgins. The trial judge, Mr. Justice Lennox, referring to the resolution said that it—

> was vicious and unlawful *per se* for its exercise was intended, upon the face of it, to contravene and override the injunction order of the Court should it be issued. . . . There is a palpable absence of good faith in the whole transaction; it is contrary to the spirit and intent of the injunction order; it is contrary to what was necessarily implied upon the adjournment; and it has created an intolerable state of things which I feel I have power to and ought to remedy. (32 O.L.R. 250.)

The learned judge accordingly made an interim order dated 11th September, 1914, directing the Board to open the schools not later than September 16, 1914, with qualified teachers in charge; to conduct the schools according to law; to permit and facilitate the return of the duly qualified teachers who in the preceding month of June were in charge of the schools to their former positions as teachers; and he restrained the Board from interfering with or molesting the teachers in the discharge of their duties. In his judgment delivered after the completion of the trial he repeated these provisions and added others. In his reasons for judgment he expressed the hope "that before long the Board may recognize the wisdom of resuming the exercise of its functions according to law." (32 O.L.R., p. 258.) This hope was not, however, realized. The Board permitted the former qualified teachers in the English schools to return to their classes, thus enabling the schools to be opened, but there was no proper observance by the Board of the school law and regulations. The Board did not exclude the teachers and pupils from the English schools, but it did not pay the teachers their salaries nor did it enforce Regulation 17 in the English-French schools. Such a condition could not last long. It was impossible to manage the schools under Court orders through the medium of a Board a majority of whose members were looking for opportunity to punish the minority for asserting their rights in the courts. The situation would become worse as time went on. It became obvious that new trustees must replace the trustees who were refusing to adminster the trust conferred on them by the Separate Schools Act. Legislation was necessary to enable new trustees to be appointed. Accordingly the Legislature passed the Act of 1915. It recited the litigation between R. Mackell and others and the School Board and also contained the following recital:—

> And whereas the said Board has failed to open the schools under its charge at the time appointed by law and to provide or pay qualified teachers for the said schools and has threatened at different times to close the said schools and to dismiss the qualified teachers duly engaged for the same.

The Act proceeded by section 2 to declare it to be the duty of the Board to conduct the schools under its charge according to law with qualified teachers in charge; to continue to employ the qualified teachers then in the employ of the Board at the salaries then paid unless the Minister of Education otherwise approved; to engage such additional teachers as might be necessary; to pay the salaries of all qualified teachers as they became due; and to do other necessary acts.

It was hoped that the Board would proceed at once to perform these duties. Fearing that it might not, section 3, the section now assailed, was passed whereby if the Minister of Education was of opinion that the Board failed to perform its said duties he could with the approval of the Lieutenant Governor in Council, appoint a commission; vest in the commission all or any of the powers possessed by the Board; suspend or withdraw all or any part of the rights, powers or privileges of the Board; restore the whole or any part of same and revest the same in the Board whenever the Minister might think it advisable; and make such use of the legislative grant for said schools or any of them as the Minister might in writing direct.

The purpose of these sections is plain. They were passed to secure for the Roman Catholic Separate supporters in Ottawa the rights to have their children taught in schools conducted according to law. The machinery in force in 1915 to secure to them that right had broken down and new provisions were necessary to remedy this defect. The legislation was intended to overcome the difficulty created by a majority of the school trustees acting illegally, and depriving a large section of the Roman Catholics in Ottawa of their rights. It is true that another section of Roman Catholics in Ottawa submitted to and even encouraged the action of the Board, but they merely approved an abuse of power by the trustees. In any event they could give no consent or approval that would deprive the minority of their rights.

Besides the right of the minority there was also the public interest to be considered. Schools are established to ensure the proper education of all children thereby making them good and efficient citizens. There is no paramount right in the parent to determine that his child shall go uneducated or to constitute himself the sole judge as to the education the child shall receive. This principle was recognized at Confederation as fully as it is to-day. The Roman Catholic Separate Schools were then, as the Chief Justice of Ontario points out in the passage of his judgment above quoted, subject to regulation by the Council of Public Instruction which then filled the place now occupied by the Department of Education. The majority of the trustees for a particular school could not then any more than they can now carry on the school in defiance of the school law and regulations. Legislation which deposes trustees who attempt so to carry on a school and substitutes for them trustees who will obey the law cannot be said to be "prejudicial"—it is in fact beneficial. And if a majority of the electors deliberately appoint trustees who will not perform the duties they owe either to the minority of the class or to the public at large other means of appointing trustees must be found.

But this question like the question as to the validity of Regulation 17 has been contested by the Board in the courts and is now determined adversely to the Board's contention.

The Commission on its appointment took control of the moneys on deposit to the credit of the Board in the Quebec Bank and it claimed the right to receive the Roman Catholic Separate School rates collected by the City of Ottawa. The Board instituted actions against the Commission, the Quebec Bank and the City of Ottawa for the express purpose of establishing its right as against the Commission to manage the

school funds. The trial took place at Ottawa on 30th October, 1915, before the Honourable the Chief Justice of Common Pleas (Chief Justice R. M. Meredith) and after reserving the matter for consideration the learned Judge delivered written reasons for judgment in which he upheld the validity of section three and directed that the actions brought by the Board should be dismissed. His reasons for judgment will be found in volume 34 of the Ontario Law Reports, page 624. At page 631 he says:—

> The removal of trustees who fail or refuse to perform the duties of their office, and especially so when they do so contumaciously, is but a familiar, appropriate, and sometimes necessary legal method; and for a High Court of Parliament, Provincial or Federal, to remove trustees filling a public office, even though elected to that office, and the more so if elected with a view to continuing to refuse or fail to perform such duties in the face of a judgment of a Court of competent jurisdiction, making those duties plain, could not be an infringement upon any legal right, but must be an endeavour to maintain and enforce it; and the mere fact that an appeal may be taken, or is contemplated, against such judgment, is no kind of excuse for disregarding it, unless its effect is suspended, during the appeal, by law, or by a competent court; the only legal and proper course, especially for a public officer, is to yield obedience to that judgment until it is reversed, if ever it should be; and that the plaintiffs should have done, and in doing would have remained in office.

The Board appealed from this judgment and the Appellate Division of the Supreme Court of Ontario dismissed the appeal on 3rd April, 1916. The Appellate Court reached the conclusion that the effect of the statute is to safeguard rather than prejudicially affect the rights and privileges which at Confederation were secured to Roman Catholics in Ontario. The question was one entirely suitable for the Courts to determine. The School Board itself selected that forum and a judgment adverse to the Board has been affirmed on appeal. The Board should not now be permitted to select another forum for the decision of the same question. The question is one of fact—prejudice or no prejudice—which can be determined much better by the Courts than by the Governor General in Council.

Besides asserting that the Statute of 1915 is *ultra vires,* the Petitioners base their request for disallowance partly on the ground that the Act should be disallowed under the discretionary power which it is claimed the Governor General in Council may constitutionally exercise with respect to *intra vires* provincial legislation. When reporting on the petition to disallow the statute passed by the Legislature of Ontario, 7 Edward VII (1907), chap 15, entitled, "An Act respecting Cobalt Lake and Kerr Lake," the then Minister of Justice, Sir Allen Aylesworth, in his report dated 21st April, 1908, referred to former reports on other provincial legislation made by his predecessors, the Hon. Mr. Mills and Sir Charles Fitzpatrick, as follows:—

> The undersigned shares the views expressed by Mr. Mills and Mr. Fitzpatrick. In his opinion it is not intended by the British North America Act that the power of disallowance shall be exercised for the purpose of annulling provincial legislation, even though your Excellency's Ministers consider the legislation unjust or oppressive or in conflict with recognized legal principles so long as such legislation is within the power of the Provincial Legislature to enact.
>
> The undersigned is of opinion that where an Act is of a merely domestic or local character and does not affect any matter of Dominion interest, your Excellency's Government ought not to review the policy or propriety of the measure which is exclusively a matter of provincial concern, and he accepts the general view that it is not the office or right of the Dominion Government to sit in judgment considering the justice or honesty of any Act of a provincial legislature which deals solely with property or civil rights within the province.

Sir Allen Aylesworth when reporting on 29th March, 1911, with respect to the proposed disallowance of the Statute of Ontario passed in 1909, cap. 19, being an Act to amend the "Act to provide for the transmission of electrical power of Municipalities," repeated this view in the following language:—

> In answer to the several petitions and complaints which have been submitted the Government of Ontario refers to a number of precedents to be found in the opinions of the Ministers of Justice upon provincial legislation submitted to the Governor General in Council, wherein the view is expressed that the Governor General cannot consistently exercise the power of disallowance upon any ground affecting the justice or expediency of a local statute in relation to matter, constitutionally committed to the legislatures, and this view has been very recently reaffirmed by your Excellency's Government upon a report of the undersigned in relation to an Ontario Statute of so late a date as 1907. Many cases might be quoted in addition to those referred to in which the Governor General has declined to act upon such reasons as affording grounds for disallowance. The undersigned, therefore, considers it impossible in accordance with both practice and principle that your Excellency's Government should sit in judgment upon the propriety of this measure.

The present Minister of Justice (Hon. Mr. Doherty) when reporting on 20th January, 1912, on the petition to disallow the Statute of the Province of Alberta passed in 1910, relating to the Alberta and Great Waterways Railway Company, said:—

> There was considerable discussion at the hearing as to the practice and precedents in respect of disallowance of legislation by reason of unjust provisions or because of its interference with vested rights or the obligations of contract, and a recent report of the predecessor in office of the undersigned was quoted as showing that the Governor General should in no case be advised to disallow for such reasons. It is true, as has been frequently pointed out, that it is very difficult for the Government of the Dominion, acting through the Governor General, to review local legislation or consider its qualities upon questions of hardship or injustice to the rights affected, and this is manifest not only by expressions in reports of the minister, but also by the fact that but a single instance is cited in which the Governor General has exercised the power upon these grounds alone.
>
> The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operation of local statutes *intra vires* of the legislatures. Doubtless, however, the burden of establishing a case for the execution of the power lies upon those who allege it; and, although the undersigned is not prepared to express approval of the statute in question, which he feels must be regarded as a most remarkable execution of legislative authority, he is nevertheless not satisfied that a sufficient case for disallowance has been established either on behalf of the bondholder, the bank, or the companies, especially when it is considered that the legislation sanctioned by the Assembly evidences as it does a very deliberate and important feature in the policy of the local Government.

It is not necessary in this case to consider whether the limits of the constitutional rights to disallow provincial legislation are those indicated in the reports of Sir Allen Aylesworth or those indicated in the report of the Honourable Mr. Doherty. The Act in question should not be disallowed in either view. Assuming it is *intra*

vires it expresses "a very deliberate and important feature in the policy of the local Government" and should not be interfered with. The Governor General in Council and the Dominion Parliament are by subsections 3 and 4 of section 93 given express jurisdiction over certain provincial legislation relating to education. Provincial legislation should not be interfered with except in cases falling within those subsections and then only in the manner therein provided.

The undersigned submits that the Act in question should not be disallowed because:—

1. It is *intra vires* of the Ontario Legislature and has been so held by the Courts of Ontario.

2. The question is one suitable for the Courts to determine as the validity of the statute depends in one view on a question of fact—prejudice or no prejudice.

3. The terms of the regulation and the statute are acceptable to and protect the rights and privileges of a very large section of the Roman Catholics in Ontario.

4. Regulation 17 was made pursuant to the settled and definite policy of the Government which policy was in 1911 approved by the unanimous vote of the Assembly.

5. Regulation 17 was in force three years before the statute was passed and will remain in force even if the statute is disallowed.

6. The statute was assented to on 8th April, 1915. The Commission was not appointed under section three until 20th July, 1915. If it was intended to ask for disallowance, the petition should have been presented at an earlier stage before the Commission was appointed and placed in charge.

7. Disallowance of the statute at this date would restore a situation described by the trial Judge as intolerable.

8. The Board decided to test the validity of the statute in the Courts and it has been decided that the statute safeguards the rights and privileges of Roman Catholics in Ontario rather than prejudicially affects them and the Governor General in Council should not in effect hear an appeal from the judgments pronounced by the Courts.

9. Provincial legislation affecting education should not be disallowed unless it plainly contravenes sub-section one of section 93 of the British North America Act. Sub-sections three and four of section 93 give certain express authority to the Governor General in Council and to the Dominion Parliament over Provincial legislation affecting education, and no Provincial legislation which is *intra vires* should be interfered with unless it comes within those sub-sections and then only in the manner therein provided.

All of which is respectfully submitted.

H. H. HEARST,
Prime Minister.

Dated at Toronto this 4th day of April, 1916.

CERTIFIED COPY *of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 28th April, 1916.*

The Committee of the Privy Council have had before them a report, dated 26th April, 1916, from the Minister of Justice, upon the statutes of the Legislature of Ontario, passed in the fifth year of His Majesty's reign, 1915, and received by the Secretary of State for Canada on 28th April, 1915.

The minister recommends that these statutes be left to such operation as they may have, and the committee concur in his recommendation.

SESSIONAL PAPER No. 271a

The committee, on the recommendation of the Minister of Justice, advise that a copy of this Minute, together with copy of the report of the Minister of Justice, be transmitted to the Lieutenant Governor of Ontario for the information of his Government, and that copies be also furnished for the information of the petitioners.

All of which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

DEPARTMENT OF JUSTICE, CANADA,
OTTAWA, April 26, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of Ontario, passed in the fifth year of His Majesty's reign, 1915, and received by the Secretary of State for Canada on 28th April last, and he is of opinion that these statutes may be left to such operation as they may have.

Chapter 45, intituled "An Act respecting the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa," must, however, be the subject of special consideration..

A great number of petitions and representations have been made with respect to this legislation, many of them very numerously signed, on behalf of ecclesiastical and municipal authorities and of individuals; and these have been the subject of careful consideration, not only by reason of the importance and public interest attached to the matter concerned, but also on account of the respectable and dignified status or position in the community of those who join in the submissions. Among the petitions there is one from the "Board of Trustees of the Roman Catholic Separate Schools of the city of Ottawa, on its own behalf and on behalf of numerous Boards of Trustees of Roman Catholic Separate Schools in the province of Ontario, and on behalf of supporters of Roman Catholic Separate Schools in the said city of Ottawa and throughout the said province," in which the petitioners pray that the said chapter 45 may be disallowed for reasons which are very elaborately set forth and discussed, and which include the reasons of the other petitioners. These will be considered in this report.

The Act proceeds upon a preamble or narrative setting forth the motive of the legislation which may be advisably quoted in full, since the facts therein narrated are not disputed by the petitions. It is as follows:—

> "Whereas an action is now pending in the Supreme Courts of Ontario in which one R. Mackell and other supporters of the Separate Schools in the City of Ottawa are plaintiffs and the Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa is defendant, in which the said Board is contending that Regulation Number 17 of the year 1912 and Number 17 of the year 1913, made by the Minister of Education were *ultra vires* of the Province under the British North America Act, and that the Province had no legislative authority under the said Act to regulate the use of French as a language of instruction and communication in the Public and Separate Schools of the Province, or the teaching therein of the French language; and whereas the said Board has failed to open the schools under its charge at the time appointed by law, and to provide or pay qualified teachers for the said schools, and has threatened at different times to close the said schools and to dismiss the qualified teachers duly engaged for the same."

Upon these recitals the statute proceeds to declare or enact that, subject to the question of legislative authority, the said regulations, No. 17, were duly made and

approved under the authority of *The Department of Education Act*, and became binding according to their terms and provisions upon the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa and the schools under the control of the Board; that it shall be the duty of the members of the Board to keep open, maintain and conduct the schools under their control according to law, with qualified teachers and suitable accommodation for the children attending; to continue to employ the qualified teachers at present in the service of the Board at their present salaries, unless otherwise directed with the approval of the Minister of Education; to engage such additional teachers as may be required; to pay the salaries of all qualified teachers as they become due, and to do such acts as may be necessary to carry out and perform these duties.

Then by section 3 it is enacted that if, in the opinion of the Minister of Education, the Board fail to comply with any of the provisions of the Act, the Minister shall have power with the approval of the Lieutenant Governor in Council to appoint a commission; to vest in the commission so appointed all or any of the powers possessed by the Board under statute or otherwise, including the right of administration of the assets of the Board, and such other powers as may be expedient to carry out the intent and objects of the Act; to suspend or withdraw all or any part of the rights, powers and privileges of the Board, and to restore the whole or any part thereof and revest them in the Board as may be desirable; also to make such use or disposition of any legislative grant payable to the Board for the use of the schools as the Minister may in writing direct.

Finally it is provided that nothing in the Act shall be construed to relieve the Board, or any of its members, from the discharge of any of the duties imposed upon it or them by law, or by any judgment in the recited action, or from any liability incurred by reason of failure or neglect of any of the members of the Board to discharge or perform any of the said duties.

The 17th Regulation which is referred to in the preamble and in the first section of the Act makes provision regarding the courses of study to be pursued in the English-French schools, public and separate; that where necessary in the case of French-speaking pupils, French may be used as the language of instruction and communication, not to be continued, however, beyond form 1, except that, with the approval of the Chief Inspector, French may also be used as the language of instruction and communication in the case of pupils beyond Form 1 who are unable to speak and understand the English language; that in the case of French-speaking pupils who are unable to speak and understand English well enough for the purpose of instruction and communication, the pupil shall begin the study and use of English as soon as he enters school, and take up the course of study in that language when he has acquired sufficient facility in the use of English; that in schools where French has hitherto been a subject of study, the public or the separate school board, as the case may be, may provide for instruction in French reading, grammar and composition in Forms I to IV, in addition to the subjects prescribed for the public and separate schools, such instruction in French to be taken only by pupils whose parents or guardians direct that they shall do so, and that such instruction may, notwithstanding the general provision, be given in the French language; that instruction in French shall not interfere with the adequacy of the English courses, and that a provision for such instruction in French in the time table of a school shall be subject to the approval and direction of the Chief Inspector, and shall not in any day exceed one hour in each class-room, except where the time is increased upon the order of the Chief Inspector. There are further provisions to the effect that English-French schools shall, for the purposes of instruction, be organized into two divisions, each division being under the charge of two inspectors, and there are directions for the inspectors in the performance of their duties of inspection; moreover the Chief Inspector of Public and Separate schools is to be the Supervising Inspector of the English-French schools; no teacher is to be

granted a certificate to teach in English-French Schools, or to remain in office, or to be appointed to teach, who does not possess a knowledge of the English language sufficient to teach the Public and Separate school course of study; and it is also provided that the legislative grants to the English-French schools shall be made on the same conditions as are the grants to the other Public and Separate schools, and that English-French schools which are unable to provide the salaries necessary to secure teachers with the aforesaid qualifications shall receive special grants to assist.

These regulations were made presumably by the Minister of Education with the approval of the Lieutenant Governor in Council as authorized by *The Department of Education Act* of Ontario; and they derive their sanction from the latter Act, and independently of Chapter 45; although, as already shown, they are declared by Chapter 45, subject to a question as to the legislative authority of Ontario, to have been duly made and approved.

It may thus be perceived that the purpose of the legislation is to regulate the duties of the Board of Trustees of the Roman Catholic Separate schools for the City of Ottawa, and, in anticipation of failure or neglect of the board to comply with its statutory requirements, to confer upon the Minister of Education, in that event, authority to appoint a commission, in the place of the trustees, for carrying on the schools in the meantime; but it is nevertheless the apparent intention that the board, or its members, shall not be relieved of their duties and obligations as imposed by the law, and it would seem to follow that a disposition on the part of the members of the board to execute their powers as legally required would find the board in the full possession of those powers.

The petitions aver that Roman Catholic Separate schools have been established, maintained and conducted in Ontario since 1841, and especially, in the years immediately preceding Confederation, under the provisions of the Upper Canada Statute of 1863, Chapter 26, entitled: "An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate schools;" that in some of these Separate schools French was the only language used as means of instruction and communication and as a subject of study, while in others, both the French and English languages were used as media of instruction and communication, as well as subjects of study, and that at the time of the passing of the British North America Act, 1867, a great many schools and classes answering to these descriptions had been established, and were being maintained, in various parts of Ontario. Reference is made to the education provisions of the British North America Act, 1867, and it is shown that since the Union the Roman Catholic Separate schools have continued to be conducted in the manner described. Then it is said that by the 17th regulation the use of the French language in such schools has been unjustly limited, or actually prohibited, and that the schools have been subjected to inspection "contrary to and infringing upon the denominational character of said schools," and that the Department of Education is endeavouring to enforce the provisions of the regulation notwithstanding the representations, objections and protests of the petitioners; that the petitioners have resorted to the courts to enforce their rights and privileges and to impeach the validity of the regulation, and complaint is made that pending the litigation the regulation was declared to be valid by section 1 of the said chapter 45. The petitioners, moreover, complain of the appointment of a commission under the authority of the last mentioned Act, whereby the trustees are superseded in the execution of their office, and of the state of things which has been brought about by the administration of the Separate schools under the direction of the commission; and the petitioners submit that the enactment and enforcement of Regulation 17, and of the said Chapter 45, constitute "an unjust and arbitrary violation, and the abrogation of the provisions of the laws respecting Separate schools, of the British North America Act 1867, and of the rights privileges, powers and duties by such laws granted and guaranteed to the said board and the said ratepayers."

The petitioners also argue that the legislation as evidenced by the statute and regulations is aggressive and unfriendly, and in conflict with the principles of good government and benevolence which should be observed in the execution of legislative powers affecting the education of bilingual races under a common system. The claim, however, is, as already shown, that the statute be disallowed, and the petitioners evidently realize what will hereinafter be made clear, that the regulations themselves cannot be disallowed.

It will thus be seen that both the subject matter of complaint and the grounds of the complaint are divisible into two heads. The regulation is attacked and the statute is attacked. It is claimed that both these are *ultra vires* of the provincial authorities, and it is moreover claimed that both the regulation and the statute are vicious in quality.

The 17th regulation in its present and latest form appears, upon the information before the undersigned to have been sanctioned not later than August, 1913. It is an emanation from the Executive of Ontario in the performance of their statutory powers, and it is not within the prerogative of disallowance vested in Your Royal Highness to issue any order or direction which would invalidate or interfere with the effect of the regulation. The power of disallowance is conferred by section 56 of The British North America Act, 1867, whereby it is in substance enacted that where the Lieutenant Governor of a province assents to a Bill, he shall, by the first convenient opportunity, send an authentic copy of the Act to the Governor General, and if the Governor General in Council, within one year after the receipt thereof, think fit to disallow the Act, in the manner therein prescribed, the Act shall be thereby annulled. While, therefore, a local statute may be disallowed by Your Royal Highness in Council within the period of one year from the date of its receipt, and while if the power were exercised regulations depending upon the statute would doubtless fall with it, there is nevertheless no power conferred to disallow a regulation at any time passed under the authority of a statute in force, the time for disallowance of which has long since expired, still less to disallow such a regulation if, as in the present case, it has never been communicated by the local Government, and is not required to be communicated to Your Royal Highness.

Consequently in so far as it is sought by the petitions to have the 17th regulation disallowed or invalidated, if that be an object of the petitioners, the prayer must fail by reason of the absence of any manner of authority in Your Royal Highness in Council to achieve or give effect to that purpose.

As to the disallowance of chapter 45, however, the case stands upon a different footing. The statute was assented to by the Lieutenant Governor on 8th April, 1915, and received by the Secretary of State of Canada in due course on 28th April idem, and is consequently within the undoubted power of Your Royal Highness in Council to disallow.

By Order in Council of 11th March last, it was directed, upon the recommendation of the undersigned, that copy of the petition presented on behalf of the Board of Trustees should be transmitted to the Lieutenant Governor of Ontario for the observations of his Government; and in reply a memorandum of the Prime Minister of Ontario, dated 4th instant, setting forth the views of his Government, has been received. Copies of the petition and of the memorandum on behalf of Ontario in reply are submitted herewith.

It would appear, not only from the memorandum of the Prime Minister of Ontario, but also from the official reports of the proceedings to which he refers, that the questions which are or were in litigation as affecting the validity of Regulation 17 and the said chapter 45 have been finally determined by the local courts, and that the validity, both of the regulation, as a competent execution of the power conferred upon the Minister of Education by *The Department of Education Act,* and of the

statute as within the constitutional authority of the legislature, has been upheld. It is possible, no doubt, that these decisions may be reviewed, either by the Supreme Court of Canada or by the Judicial Committee of the Privy Council, or perhaps by both tribunals; but whether the judgments be carried to appeal or not, it would, in the opinion of the undersigned, be an obviously unconstitutional proceeding that the undersigned, even if he entertained an opinion different from that which has been expressed by the Courts, should advise Your Royal Highness to make that opinion the basis, as against the judicial pronouncements, so long as they stand, of an order for disallowance, upon the ground that the legislation is incompetent to the enacting authorities.

It was said by Lord Watson in delivering the judgment of the Judicial Committee of the Privy Council in Union Colliery of British Columbia vs. Bryden, 1899, Appeal Cases, pp. 584-585, referring to the distribution of legislative authority by the British North America Act 1867, that "In assigning legislative power to the one or the other of these parliaments, it is not made a statutory condition that the exercise of such power shall be, in the opinion of a court of law, discreet. In so far as they possess legislative jurisdiction, the discretion committed to the parliaments, whether of the Dominion or of the Provinces, is unfettered. *It is the proper function of a court of law to determine what are the limits of the jurisdiction committed to them;* but when that point has been settled, courts of law have no right whatever to inquire whether their jurisdiction has been exercised wisely or not."

That eminent lawyer and former Minister of Justice, the late Honourable Edward Blake, speaking in the House of Commons in 1890 upon the subject of the exercise of the power of disallowance, alluded to the case in which a proposal comes before the executive to disallow an Act of a provincial legislature on the ground that the Act is *ultra vires,* and he said: "If it be so, the Act is void, and I think I may say that it is now generally agreed that void Acts should not be disallowed, but should be left to the action of the Courts."

Occasions may nevertheless present themselves, and have in fact occurred, in which the absence of a decision upon the case by the courts of law, or conformably with such a decision, a Minister of Justice might advise the disallowance of a statute upon grounds of *ultra vires;* but a Minister could not, in the opinion of the undersigned, without assuming the functions of a court of appeal, which are not intended to be exercised by him, set up his individual view as a motive of proceeding in opposition to the deliberate finding of the established tribunals upon issues submitted, heard and determined in judicial proceedings in which the parties are properly convened upon the very question in hand.

One branch of the petitioners complaint concerns the legislative ratification of the regulation, but the objections to the validity of the regulation, independent of a question as to the power of the Ontario Government to enact it, if any, are not stated, and they do not appear; nor is the undersigned informed that there is any question as to compliance with the statutory requirements for the sanction of the regulation. It is true that the petitioners contend that the regulation is in excess of provincial powers as limited by section 93 of the British North America Act, 1867; but, assuming the regulation as competent to provincial authority in the execution of those powers, it is not suggested that it is invalidated by reason of any defect in the method of enactment. Moreover the regulation was judicially upheld in the case of Mackell *vs.* the Ottawa Separate School Trustees, 32 O.L.R. 245, a decision pronounced before the enactment of chapter 45 now in question; and, as pointed out in the Prime Minister's memorandum, the legislative declaration of the binding effect of the regulation is expressed to be subject to the question of the legislative authority of the province under the British North America Act, 1867, a question which it may be observed, could not be prejudiced or affected by any provincial Act.

The petitioners' case for disallowance must therefore rest upon the argument that the exercise of the powers which the Ontario legislature possesses in the enactment of the said Chapter 45 has been indiscreet or unwise, and in conflict with the public interest. In the consideration of this aspect of the case it must not be overlooked that the subject of education has been committed in a very special manner by the Constitutional Act to the exclusive legislative power of the provinces. The general powers of legislation are distributed by Sections 91 and 92, in which there is no reference to education; but Section 93 is introduced specially to provide for this subject, and it is thereby enacted that in and for each province the legislature may exclusively make laws in relation to education, subject and according to certain limitations, which are expressly defined; and the suggestion or claim of the petitioners in effect is that Your Royal Highness's Government should review the exercise of this exclusive legislative power of the Province of Ontario, executed as it must be assumed to have been executed, for the purposes of the present question, within the limitations prescribed.

There has been much consideration of the question as to the exercise of the prerogative of disallowance with respect to statutes, the intent and operation of which are confined to the regulation of matters within exclusive provincial authority; and not only has the propriety of exerting the power in such cases, except where the general policy of the Dominion is affected, been seriously doubted by many of the Ministers of Justice, but the very existence of the power is questioned, if not denied, by the immediate predecessor in office of the undersigned. That the power legally exists cannot, however, in the humble opinion of the undersigned be disputed. But such powers must of course be exercised upon sound principles of statesmanship, and not arbitrarily or in conflict with the powers of self-government committed to the Provinces.

The Petitioners represent that there has been aroused in connection with the questions dealt with by this legislation, feelings of unfriendliness between the two principal elements of the Canadian population. The suggestion intended apparently is that such a state of feeling would so endanger the harmony of the Dominion as to make it a matter of general interest to Canada that it should be allayed. It cannot, in the view of the undersigned, be said that Your Royal Highness's Government is not interested for the peace, order and good government of Canada to avert such unhappy consequences as are thus suggested, if that be possible by any constitutional means. But the method proposed is disallowance, and it becomes necessary to consider whether it may, according to the true intent of the constitution, be justifiably adopted and whether its adoption would tend to allay or might not rather intensify the regrettable differences which are said to have arisen. The people of Ontario have through their representatives given effect to the legislation in question as expressing, in the words adopted by the Prime Minister of Ontario, "a very deliberate and important feature in the policy of the local Government" in relation to the preeminently important subject of education, and within the strict powers of the legislature as judicially defined. The measure is therefore sanctioned by the constitutional tribunal. Your Royal Highness's Government cannot, nor can the Parliament of Canada, put anything in the place of the provincial Act. Neither the one nor the other can have any policy to enunciate or sanction with regard to the conduct of the Roman Catholic Separate schools for the city of Ottawa within the limits committed exclusively to the legislature. This is a matter wholly withdrawn from the legislative authority of the Dominion by the Constitutional Act.

It is observable that the statute is introduced by the preamble hereinbefore quoted, and that the facts therein narrated are not in any respect denied or put in question by the petitioners. In view of this narrative of the proceedings, as amplified and continued by the Prime Minister's memorandum, and upon consideration of the

provisions of the statute, it appears that the purpose and effect of the legislation is to provide temporarily for the performance of statutory duties which the trustees, upon whom the duties have been charged, refuse to excute. It would seem that provincial powers of self-government, if they are to be effective at all, must extend to the adoption of this statutory expedient; and a declaration by Your Royal Highness in Council that the provision of the legislature is so inappropriate or unreasonable as to justify its rejection, in competition with the alternative that the Roman Catholic Separate Schools of the City of Ottawa shall remain in the condition which the preamble describes, would involve a responsibility for the administration of Provincial powers which the undersigned cannot advise Your Royal Highness to undertake.

Disallowance in such circumstances would suggest that the legislature cannot be trusted to execute according to its own advice the limited powers committed to it, and not only would it create great popular dissatisfaction, but it would also give rise to a constitutional issue, which Your Royal Highness's Government could not justifiably uphold, and which would be fraught with danger to the maintenance of harmony between the people of the Dominion, as great if not indeed greater than that sought to be averted.

Therefore the undersigned does not feel justified to consider further the merits of the legislation, but he observes that the question whether the French language should be used for purpose of study and communication in the schools of Ontario is not strictly involved, because behind the statute stands the 17th Regulation, which would continue to operate notwithstanding disallowance of the statute, and the use of the French language in the schools would still be governed by its provisions.

For these reasons the undersigned is unable to advise that the petitioners present a case upon which Your Royal Highness can be advised to exercise the power of disallowance, and he humbly recommends that the said chapter 45 be left to its operation, subject to further adjudication of the ultimate tribunals, if the pending proceedings be carried to appeal.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government, and that copies be also furnished for the information of the petitioners.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

PRIME MINISTER'S OFFICE,

OTTAWA, ONT., March 4, 1916.

DEAR MR. DOHERTY,—The enclosed communication from the Secretary of State transmitting petition of the "Congrès Annuel de l'Association Canadienne-française d'Ontario," praying for the disallowance of the Act of the Province of Ontario, chapter 45, 5 George V (1915), is submitted to you for consideration and report.

Yours faithfully,

R. L. BORDEN.

Hon. C. J. DOHERTY, K.C.,
Minister of Justice,
Ottawa.

OFFICE OF THE SECRETARY OF STATE,

OTTAWA, March 4, 1916.

DEAR SIR ROBERT,—As requested by the President of the "Congrès Annuel de l'Association Canadienne-française d'Education d'Ontario," Mr. Sam. Genest, I beg to transmit to you, for the consideration of the Governor General in Council, the petition of that association praying for the disallowance of the Act of the Province of Ontario, chapter 45, 5 George V (1915), of which they complain.

Yours very truly,

P. E. BLONDIN,.

The Right Honourable
Sir R. L. BORDEN, G.C.M.G., K.C., LL.D., M.P.,
Prime Minister of Canada,
Ottawa, Ont.

FRENCH CANADIAN CONGRESS OF EDUCATION OF ONTARIO.

OTTAWA, March 1, 1916.

The Hon. P. E. BLONDIN,
Secretary of State, etc., etc.,
Ottawa.

DEAR MR. MINISTER,—I have the honour to forward to you the petition which all delegates of the French-Canadian Congress of Education of Ontario have signed, praying that the Governor General in Council disallow the Act passed by the Ontario Legislature at its last session, and set forth in the statutes of the said province of Ontario at chapter 45, 5 George V, intituled, An Act respecting the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa.

Please forward the said petition to His Royal Highness the Governor General in Council.

Additional petitions of a similar nature will be sent you as soon as we receive them. We did not care to wait longer for the receipt of said petitions, thereby sending them all at once, because we considered it best to give the Governor General in Council ample time to give our request the necessary consideration, so that a decision could be arrived at before the expiration of the time which is fixed by the British North America Act.

I have the honour to be,

Your obedient servant,

SAMUEL M. GENEST,
President of the Ontario French Canadian Congress of Education.

OTTAWA, March 6, 1916.

DEAR SIR ROBERT,—I beg to acknowledge receipt of your letter of the 4th instant, enclosing communication from the Secretary of State transmitting petition of the "Congrès Annuel de l'Association Canadienne-française d'Education d'Ontario," praying for the disallowance of the Act of the Province of Ontario, chapter 45, 5 George V (1915).

Yours sincerely,

CHAS. J. DOHERTY.

The Rt. Honourable
Sir ROBERT L. BORDEN, G.C.M.G.,
Prime Minister,
Ottawa.

SESSIONAL PAPER No. 271a

OTTAWA, March 6, 1916.

DEAR SIR ROBERT,—I beg to acknowledge receipt of your letter of the 4th instant, enclosing communication from the Secretary of State transmitting petition of the "Congrès Annuel de l'Association Canadienne-française d'Education d'Ontario," praying for the disallowance of the Act of the Province of Ontario, chapter 45, 5 George V (1915).

Yours sincerely,

CHAS. J. DOHERTY.

The Rt. Honourable
Sir ROBERT L. BORDEN, G.C.M.G.,
Prime Minister,
Ottawa.

PRIME MINISTER'S OFFICE,

OTTAWA, ONT., February 28, 1916.

MY DEAR DOHERTY,—I enclose herewith copy of letter from Hon. N. A. Belcourt, which explains itself. This is sent for your information.

Yours faithfully,

R. L. BORDEN.

Hon. C. J. DOHERTY, K.C.,
Minister of Justice,
Ottawa.

OTTAWA, February 25, 1916.

The Right Hon. Sir ROBERT BORDEN, G.C.M.G.,
Prime Minister,
Ottawa.

MY DEAR SIR ROBERT,—On looking over the petition to His Royal Highness the Governor in Council praying for the disallowance of the Statute 5, George V, chapter 45 (1915), I find that in the quotation in sub-paragraph (*d*) of paragraph 21, an error has been committed. The citation should be 1863, 26 Victoria, chapter 5. Will you be good enough to have the subsection stricken out and replaced by 1863, 26 Vic., chap. 5, as otherwise it would be very misleading.

Yours very truly,

N. A. BELCOURT.